



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO
GJKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT

Prishtina, 24 August 2015
Ref. no.: RK 826/15

RESOLUTION ON INADMISSIBILITY

in

Case No. KI98/14

Applicant

Rasim Rashica

**Constitutional review of Decision PPC. no. 39/2011,
of the Supreme Court, of 5 August 2011**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge, and
Bekim Sejdiu, Judge

Applicant

1. The Applicant is Mr. Rasim Rashica from village Bresje, Municipality of Fushe Kosove, represented by the lawyer, Mrs. Vahide Braha from Prishtina (hereinafter: the Applicant).

Challenged Decision

2. The Applicant challenges Decision [PPC. no. 39/2011] of the Supreme Court, of 5 August 2011, by which the Supreme Court rejected the Applicant's proposal for repetition of procedure as ungrounded and upheld the revision of the Supreme Court of Kosovo.
3. This decision was served on the Applicant on 13 March 2014.

Subject Matter

4. The subject matter is the constitutional review of the challenged decision, which has allegedly violated Article 24 [Equality Before the Law], Article 31 [Right to Fair and Impartial Trial], Article 49 [Right to Work and Exercise Profession] and Article 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo and that there has been a substantial violation of the Law on Contested Procedure and the Law on Obligational Relationships of Kosovo.

Legal Basis

5. The Referral is based on Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) , Article 47 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 56 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

6. On 12 June 2014, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
7. On 4 July 2014, the President of the Court by Decision GJR. KI98/14, appointed Judge Altay Suroy as Judge Rapporteur and by Decision KSH. KI98/14, appointed the Review Panel composed of Judges: Robert Carolan (Presiding), Snezhana Botusharova and Ivan Ćukalović.
8. On 23 January 2015, the Constitutional Court notified the Applicant and the Supreme Court of Kosovo that the proceedings of constitutional review of the Decision of the Supreme Court of Kosovo, has been initiated. Through this notification, the Constitutional Court requested from the Applicant and the Municipal Court in Prishtina to submit a copy of the date of service with the date of receipt of the Decision PPC. no. 39/2011, of the Supreme Court, of 5 August 2011. The Court also sent a copy of the Referral to the Supreme Court.
9. On 2 March 2015, the Municipal Court submitted the requested information and in the response of the Municipal Court is stated that the Applicant was served with the challenged Decision of the Supreme Court on 13 March 2014.
10. On 3 July 2015, after having considered the Report of the Judge Rapporteur, the Review Panel recommended to the full Court the inadmissibility of the Referral.

Summary of Facts

11. On 23 October 2003, the Pension Fund of Kosovo Energy Corporation (hereinafter KEK) rendered a decision regarding the request for early retirement of the Applicant. Based on this decision, the Applicant was granted a request for early retirement from the KEK Pension Fund.
12. Dissatisfied with the abovementioned decision, the Applicant filed an appeal to the Dispute Resolution Committee of the KEK Pension Fund. The same committee rejected the Applicant's appeal and upheld the decision of the KEK Pension Fund.
13. On 8 January 2004, dissatisfied with the decision of the Dispute Resolution Committee of the KEK Pension Fund, the Applicant filed a claim with the Municipal Court in Prishtina.
14. On 8 June 2005, the Municipal Court in Prishtina [Decision C1. no. 4/2004] rejected the Applicant's appeal as out of time.
15. On 28 February 2007, the District Court in Prishtina [Decision Ac. no. 38/2006] approved the appeal of the Applicant and annulled the Decision of the Municipal Court and remanded the same to the Municipal Court for retrial.
16. On 23 November 2007, the Municipal Court in Prishtina after the repeated procedure [Judgment C1 no. 102/2007] approved the Applicant's claim and annulled as unlawful the Decision of KEK Pension Fund, which approved the Applicant's request for early retirement and obliged KEK to reinstate the Applicant to his previous working position.
17. Against this Judgment, KEK filed an appeal with the District Court in Prishtina.
18. On 14 October 2008, the District Court in Prishtina [Judgment Ac. no. 392/2008] rejected as ungrounded KEK appeal and upheld the Judgment of the Municipal Court.
19. Against this Judgment, KEK submitted a request for revision to the Supreme Court. On 3 March 2010, the Supreme Court of Kosovo [Judgment Rev. I. no. 40/2009] approved KEK revision and modified the Judgment [C1 no. 102/2007] of the Municipal Court and the Judgment [Ac. no. 392/2008] of the District Court, so that it rejected the Applicant's claim as ungrounded.
20. Against the Judgment of the Supreme Court, the Applicant filed a request for repetition of the procedure. On 5 August 2011, the Supreme Court [Decision PPC. no. 39/2011] rejected as ungrounded, the Applicant's proposal for repetition of the procedure.

Applicant's allegations

21. The Applicant alleges that by the challenged decision the rights guaranteed by Article 24 [Equality Before the Law], Article 31 [Right to Fair and Impartial

Trial], Article 49 [Right to Work and Exercise Profession] and Article 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo have been violated and that there have been the substantial violations of the Law on Contested Procedure and the Law on Obligational Relationships of Kosovo.

22. The Applicant requests the Court:

*“From this Court we request to declare invalid the Judgment Rev. no. 40/2009, of the Supreme Court, of 03.03.2010 and to reconsider the lost right, in accordance with the subject of the statement of claim (**on the right to compensation of salaries**)”.*

Relevant legal provisions

UNMIK Regulation no. 2001/27

On Essential Labour Law in Kosovo

Section 11

Termination of a Labour Contract

11.1 A labour contract shall terminate:

[...]

(b) *by a written agreement between the employee and employer;*

[...].

Admissibility of the Referral

23. The Court first examines whether the Applicant has fulfilled admissibility requirements laid down in the Constitution and further specified in the Law and Rule of Procedure.

24. In this respect, the Court refers to Article 113 of the Constitution, which provides:

„1. The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties.

[...]

7. Individuals are authorized to refer violations by public authorities of their individual rights and freedoms guaranteed by the Constitution, but only after exhaustion of all legal remedies provided by law.”

25. In addition, the Court refers to Article 48 of the Law, which provides:

In his/her referral, the claimant should accurately clarify what rights and freedoms he/she claims to have been violated and what concrete act of public authority is subject to challenge.

26. The Court further takes into account Rules 36 (1) (d) and 36 (2) of the Rules of Procedure, which provide as it follows:

“(1) The Court may consider a referral if:

[...]

(d) the referral is prima facie justified or not manifestly ill-founded.

(2) The Court shall declare a referral as being manifestly ill-founded when it is satisfied that:

(a) the referral is not prima facie justified, or

(b) the presented facts do not in any way justify the allegation of a violation of the constitutional rights, or

(c) the Court is satisfied that the Applicant is not a victim of a violation of rights guaranteed by the Constitution, or

(d) the Applicant does not sufficiently substantiate his claim;

27. The Court notes that in the present case, the Applicant complains about the fact that the Supreme Court, deciding upon the revision, modified the first and the second instance judgments and rejected his request as ungrounded. The Supreme Court upheld the decision, by rejecting the proposal for repetition of the procedure.
28. In this regard, the Court notes that the Supreme Court in its decisions provided comprehensive reasons for its findings. Therefore, the Supreme Court reasoned its decisions and substantiated every allegation of the Applicant in respect of the rejection of his proposal.
29. Based on this, the Court considers that the explanation given in the Decision of the Supreme Court is clear and legally grounded, and that the proceedings have not been unfair or arbitrary (See *mutatis mutandis*, *Shub vs Lithuania*, no. 17064/06, ECHR decision, of 30 June 2009).
30. The Constitutional Court further reiterates that it is not its task under the Constitution to act as a court of fourth instance, in respect of the decisions taken by the regular courts. The role of the regular courts is to interpret and apply the pertinent rules of both procedural and substantive law. (See case *Garcia Ruiz vs. Spain*, No. 30544/96, ECHR, Judgment of 21 January 1999; see also case KI10/12 of the Applicant *Rasim Kozmaqi*, Constitutional Court, Resolution on Inadmissibility, of 25 November 2013).
31. The Court reiterates that the Applicant's dissatisfaction with the outcome of the case cannot of itself raise an arguable claim for breach of the constitutional provisions (See Case *Mezotur-Tiszazugi Tarsulat vs. Hungary*, No.5503/02, ECHR, Judgment of 26 July 2005).
32. Therefore, the Court notes that the Applicant did not substantiate his allegation on constitutional grounds and did not provide evidence, indicating how and

why his rights and freedoms, protected by the Constitution, have been violated by the challenged decision.

33. Accordingly, the Court concludes that the Applicant's Referral is manifestly ill-founded in accordance with Article 48 of the Law and Rules 36 (1) (d) and 36 (2) of the Rules of Procedure.


FOR THESE REASONS

The Constitutional Court of Kosovo, pursuant to Article 48 of the Law and Rules 36 (1) (d) and 36 (2) of the Rules of Procedure, in the session held on 24 August 2015, unanimously:

DECIDES

- I. TO DECLARE the Referral Inadmissible;
- II. To notify this Decision to the Parties and to publish this Decision in the Official Gazette, in accordance with Article 20 paragraph 4 of the Law; and
- III. This Decision is effective immediately.

Judge Rapporteur



Altay Suroy



President of the Constitutional Court



Arta Rama-Hajrizi